

IN THE  
SUPREME COURT OF THE UNITED STATES

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No.      **78 - 6077**

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LAVANCE C. JONES,  
    Petitioner,  
  
    -vs-  
  
STATE OF MISSOURI,  
    Respondent.

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PETITION FOR A WRIT OF CERTIORARI  
TO THE MISSOURI SUPREME COURT

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LAVANCE C. JONES,  
    Petitioner,

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Robinson v. Kimbrough, 540 F. 2d 1264 (5th Cir. 1976).

### STATUTES:

Sixth Amendment, United States Constitution  
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PETITION FOR A WRIT OF CERTIORARI  
TO THE MISSOURI SUPREME COURT

Petitioner, Lavance C. Jones, prays that a Writ of Certiorari issue to review the judgment and opinion of the Missouri Court of Appeals entered in the above-entitled case on August 28, 1978.

OPINION BELOW

The opinion and decision of the Missouri Court of Appeals is reported at 571 S.W. 2d 741. A copy of the opinion appears in Appendix A attached hereto.

JURISDICTION

The opinion and judgment of the Missouri Court of Appeals was entered on August 28, 1978. Thereafter, a motion for rehearing was filed on September 12, 1978. See Missouri Rules of Court 84.17. The motion was overruled October 2, 1978. An application to transfer the cause to the Missouri Supreme Court was filed October 16, 1978. Missouri Rule of Court 83.03. On November 6, 1978 said application to transfer was denied by the Missouri Supreme Court, making the opinion of the Court of Appeals the final judgment of the highest court in the State of Missouri.

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257 (3).

QUESTION PRESENTED

WHETHER MISSOURI'S STATUTORY AND CONSTITUTIONAL SCHEME FOR THE SELECTION OF PETIT JURORS -- WHICH GRANTS WOMEN AN AUTOMATIC EXEMPTION BASED SOLELY ON SEX -- DENIED PETITIONER HIS RIGHT TO

TRIAL BY JURY AND DUE PROCESS OF LAW AS MANDATED AND INTERPRETED BY THIS COURT'S OPINION IN TAYLOR vs. LOUISIANA, 419 U.S. 522 (1975).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Sixth Amendment to the United States Constitution and the Due Process Clause of the Fourteenth amendment to the United States Constitution:

Sixth Amendment

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, . . . ."

Fourteenth Amendment

" . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT

Petitioner, Lavance C. Jones, was charged by indictment with the crimes of Murder, Second Degree (Sec. 559.020 R.S.Mo.) and Robbery in the First Degree (Sec. 560.120). The jury trial was held in Jackson County, Missouri Circuit Court (Sprinkle J.) in Kansas City, Missouri. Verdicts of guilt were returned and petitioner was sentenced to serve a life term on the charge of Second Degree Murder and a consecutive term of twenty-five years on the charge of Robbery, First Degree in the Missouri Division of Corrections.

HOW FEDERAL QUESTION  
IS PRESENTED

1. Prior to trial, Petitioner filed a motion to quash the jury panel on the basis that women were systematically excluded from jury service. In support of this motion, petitioner introduced

into evidence a stipulation of facts entered into by both the defense and the State. Briefly, the stipulation outlined the jury selection system used in Jackson County, Missouri, which is as follows: potential jurors are randomly selected from the Jackson County voter registration lists; these persons are sent questionnaires to determine their eligibility for jury service. By statute, this questionnaire prominently states:

TO WOMEN:

The Constitution permits women to elect to serve or not to serve as jurywomen. Any woman who elects not to serve will fill out this paragraph and mail this questionnaire to the jury commissioner at once. It will not be necessary to answer the other questions.

I elect not to perform jury service.

This paragraph is immediately followed by a signature line. Those questionnaires returned showing no exemption were placed in the jury wheel. Also stipulated to was the fact that the 1976 jury wheel was 29.1% female. Each week, names are randomly selected for jury service; these persons are then sent a summons for jury service. This summons reads on its reverse side:

Women, if you do not wish to serve, return this summons to the Judge named on the reverse side as quickly as possible.

Petitioner introduced statistics relating to the number of jurors summoned, and those actually appearing for service, during the months of January through June, 1976. Additionally, the stipulation showed that of 30,165 women sent questionnaires (for the 1976 jury wheel), fully 21,884 (72.6%) indicated an unwillingness to serve as jurors by signing the line under the last paragraph of the questionnaire, which informed them of their ability to refuse to serve because of their sex. Lastly, census evidence was introduced showing Jackson County to be 54% female. The stipulation further indicated that the person summoned for jury duty in the year 1977 were selected in the same manner as described earlier in the stipulation.

An example of the stipulation and its supporting documents is attached hereto as Appendix B and made a part hereof by reference.

At the close of Petitioner's presentation of evidence on the Motion, the State offered no evidence and the Motion was overruled.

2. Subsequent to his trial, petitioner filed a timely motion for new trial alleging the instant allegation. A timely appeal was then prosecuted to the Missouri Court of Appeals, Kansas City District, which affirmed petitioner's conviction by opinion dated August 28, 1978. Motion for rehearing was overruled October 2, 1978. Application to transfer the cause to the Missouri Supreme Court was denied November 6, 1978. The issue raised herein was raised and argued before the trial court and the Missouri Court of Appeals, whose opinion has now become the final judgment of the Missouri Supreme Court with the denial of the application to transfer. Missouri Rule of Court 83.03.

REASONS FOR GRANTING  
THE WRIT

The opinion and decision of the Missouri Supreme Court in the instant case is in direct conflict with past decision of this Court, various federal courts of appeals and several state high courts. Specifically, Petitioner contends the instant opinion is in conflict with Taylor vs Louisiana, 419 U.S. 522 (1975) and thus, cannot stand. Taylor held Article VII, Section 41 of the Louisiana Constitution and Article 402 of the Louisiana Code of Criminal Procedure (since repealed) violative of Taylor's due process rights guaranteed by the XIV Amendment to the United States Constitution.

The Louisiana law is reproduced here for the convenience of the Court:

Article VII, Louisiana Constitution

Sec. 41. Selection of jurors; women jurors; trial by judge; trial by jury.

The Legislature shall provide for the selection



and drawing of competent and intelligent jurors for the trial of civil and criminal cases; provided, however, that no woman shall be drawn for jury service unless she shall have previously filed with the clerk of the District Court a written declaration of her desire to be subject to such service. All cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury. Cases, in which the punishment may be at hard labor, shall be tried by a jury of five, all of whom must concur to render a verdict; cases, in which the punishment is necessarily at hard labor, by a jury of twelve, nine of whom must concur to render a verdict; cases in which the punishment may be capital, by a jury of twelve, all of whom must concur to render a verdict.

Louisiana Code of Criminal Procedure

Article 402. Service of women as jurors.

A woman shall not be selected for jury service unless she has previously filed with the clerk of court of the parish in which she resides a written declaration of her desire to be subject to jury service.

The United States Supreme Court in Taylor re-examined the question of automatic exclusion of women from the juries previously decided by that Court in Hoyt v. Florida, 368 U.S. 57, 7 L.Ed.2d 118, 82 S.Ct. 159 (1961) and they reached a different result. Accordingly, the Court stated:

"Accepting as we do however, the view that the VI Amendment affords the Defendant in a criminal trial the opportunity to have the jury drawn from venires representative of the community, we think it is no longer tenable to hold that women as a class may be

excluded or given automatic exemptions based solely on sex if the consequences are that criminal jury venires are almost totally male."

(42 LEd.2d 690 at 702) (emphasis added)

The question presented herein then whether Missouri offers an "automatic exemption based solely on sex" and if, "the consequences are that criminal jury venires are almost totally male."

The Missouri Constitution, Article I, Section 22(b) states: "No citizen shall be disqualified from jury service because of sex, but the court shall excuse any woman who requests exemption therefrom before being sworn as a juror." This Article is implemented by Section 497.130, Missouri Revised Statutes (1974), which section allows women to "elect to serve or not to serve as jury women."

When placed side by side and examined, the Missouri system and the Louisiana system (later changed) both offer an absolute exemption to jury service based strictly upon gender. The difference being only that in Louisiana the woman must affirmatively opt for service while her Missouri sister must affirmatively choose not to serve.

The appellant's argument is much better stated by the United States Supreme Court's final paragraph in the Taylor opinion:

". . . but the jury wheels, pools of names, panels, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonable representative thereof."

Petitioner concludes that "(t)he States remain free to prescribe relevant qualifications for their jurors and to provide reasonable exemptions . . . " Taylor v. Louisiana, at 538. Petitioner, however, does not believe that a blanket exemption for women is a reasonable exemption. Indeed, as pointed by Mr. Justice

Seiler in his dissenting opinion in State v. Billy Duren, 558 S.W. 2d 11, 24, n.4 (1977):

"The federal court (the United States District Court for the Western District of Missouri) provides for excuse on request by a woman charged with care of minor children without adequate domestic help."

Petitioner maintains that this is a reasonable exemption for women and would not serve to deny an accused his constitutional right to a representative jury: in the federal court in Kansas City, 53% of the persons on jury wheel are women and 39.8% of the actual jurors chosen were women. 556 S.W.2d at 24. This data can be contrasted with the Missouri courts: 29% of the persons on the wheel are women; seldom over 15% of the persons appearing for jury service are women; and often, as in the case-at-bar, juries are all male.

Since Taylor, several states have been faced with challenges to exemptions to women. All, except Missouri, have changed the exemption by either statute or court decision, see, e.g. State v. Gethers, 227 S.E.2d 832 (Ga.App.1976); Robinson v. Kimbrough, 540 F.2d 1264 (5th Cir. 1976); New York Judiciary Law 549 (7); Conn. Gen.Stat.Rev. Sec. 51-218, 219; Ga.Code Ann. Sec. 59-112(6); La.Stat. Ann. Sec. 13-3055; Okla.Stat. Ann. Title 38 Sec. 28; Rhode Island Gen.Laws Ann. Sec. 9-9-11; Utah Code Ann. Sec. 78-46-10(14). Missouri remains the only state with an automatic exemption for women. Further, this exemption causes gross underrepresentation of women on jury panels. (See attached exhibits as to the women appearing for jury service). The instant opinion cannot stand as a correct interpretation of this Court's opinion in Taylor. Unlike the Missouri Supreme Court, Petitioner does not believe Taylor stands for the proposition that any percentages of women on jury panels, higher than those found in Taylor, is constitutionally permissible; instead Taylor condemns jury mechanisms which deny an accused his right to a jury drawn from a reasonable cross-section

of society. The Missouri jury selection system is of such a breed: Petitioner's panel (10%) women cannot be considered as representative of society.

Accordingly, a Writ of Certiorari should issue to review the opinion of the Missouri Supreme Court affirming Petitioner's conviction.

#### CONCLUSION

WHEREFORE, Petitioner respectfully requests this Court to issue a Writ of Certiorari to the Missouri Supreme Court.

/s/  
LAVANCE JONES / Petitioner

/s/ Joe F. Willerth  
JOE F. WILLERTH  
317 West Kansas Avenue  
P.O. Box 27  
Independence, Missouri 64051  
833-1500

Counsel for Petitioner

A copy of the above and foregoing was mailed on this 17<sup>TH</sup> day of JANUARY, 1979 to Attorney General John Ashcroft, Office of the Attorney General, Supreme Court Building, Jefferson City, Missouri 65101.

/s/ Joe F. Willerth  
JOE F. WILLERTH

APPENDIX A

OPINION RENDERED BY THE MISSOURI COURT OF APPEALS  
KANSAS CITY DISTRICT, ON AUGUST 28, 1978.

APPENDIX A IS THE OPINION OF THE COURT  
IN STATE V. JONES AND CAN BE FOUND AT  
571 S.W. 2d 741. IT HAS NOT BEEN FILMED HERE.

APPENDIX B

STIPULATION ENTERED INTO BY PARTIES AND DOCUMENTS



IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
SIXTEENTH JUDICIAL CIRCUIT

STATE OF MISSOURI,

Plaintiff,

vs.

LAVANCE JONES,

Defendant.

Case No. C-49832

Criminal "B"

STIPULATION

COME NOW the defendant, Lavance Jones, by counsel Joe F. Willerth, and the state, by counsel, James Humphrey, assistant prosecuting attorney and stipulate and agree as follows:

1. All persons summoned for jury duty in the year 1976, including the persons summoned as prospective jurors in this case, were selected from a jury wheel created in the following manner:

- a. Under the direction of the Circuit Court Administrator and the Jury Commissioner, the Department of Court Computer Services created a computer data file containing the name, address, sex and ward/precinct number of every fourth registered voter in Jackson County, Missouri, in the records of the Kansas City Board of Election Commissioners and the Independence Board of Election Commissioners. An Official Notice and Questionnaire in the form prescribed by Section 497.130 of the Missouri Revised Statutes was mailed to each person whose name was selected from the aforesaid list of registered voters.
- b. Completed questionnaires were received in return mail by employees of the Department of Court Computer Services. The questionnaires were scrutinized to determine if any of the responses shown on the questionnaire indicated that that person was entitled to exemption or to be excused from jury duty. The names of those persons who appeared to be entitled to exemption or to be excused from jury duty were then removed from the role of those persons who were sent questionnaires. The list of remaining names constitutes the jury wheel for 1976.
- c. Attached hereto as Exhibit "A" is a copy of a "Summary of Questionnaire Processing for the 1976 Jury Wheel" prepared by Robert J. Kramer, Director of Computer Services, which is a summary of the number of questionnaires processed in the compilation of the 1976 Jury Wheel for Jackson County, and said Exhibit "A" may be admitted in evidence in this case.
- d. Attached hereto as Exhibit "B" is a copy of a memorandum showing the number of males whose names are included in the 1976 Jury Wheel for Jackson County and the number of females whose names are included in the 1976 Jury Wheel for Jackson County. Exhibit "B" and the information shown in that exhibit may be admitted in evidence in this case.

2. Prospective jurors are summoned as follows:

- a. Prior to the week for which potential jurors are to be summoned, the presiding judge and the jury commissioner determine the number to be summoned. This number is provided to the Department of Court Computer Services which uses a computer programmed to

randomly select the designated number of potential jurors from the 1976 Jury Wheel. The persons so selected are mailed a jury summons identical to the form of summons attached and marked Exhibit "C", which exhibit is hereby incorporated by reference.

- b. Attached Exhibit "D" (pages 1 through 7), which exhibit is hereby incorporated by reference, is an analysis of the sex and service of potential jurors summoned for each jury week in 1976 through the week of July 26, 1976. The figures contained in Exhibit "D" may be admitted in evidence in this case.

3. On February 4, 1976, the Office of the Public Defender for the Sixteenth Judicial Circuit was authorized to obtain from the Jackson County Circuit Court Administrator all "Official Notice and Questionnaire" forms which were received, processed and used to compile the 1976 Jury Wheel for Jackson County. On February 11, 1976, the Office of the Public Defender received all such questionnaires from the Office of the Circuit Court Administrator.

The questionnaires were sorted to separate those sent to males from those sent to females. Questionnaires sent to females were sorted to determine the following information and counted in each category thereby obtaining the following totals:

<u>Category</u>	<u>Total Number of Questionnaires</u>
Information on the face of the questionnaire showing that the woman was no longer a resident of Jackson County, Missouri	817
Female government employees who indicated they would not serve	21
Female professionals, including clergy, who indicated they would not serve	93
Females who indicated prior to jury service on the questionnaire (Line 12) but indicated they were willing to serve	132
Females who indicated prior jury service but were unwilling to serve	20
Female teachers who indicated they would not serve	437
Questionnaires indicating that the addressee was in a nursing home	50
Questionnaires indicating in Line 11 that the woman was physically unable to serve or some other written indication of physical infirmity such as loss of hearing, or who indicated they were ineligible under the statutes	1,106
Questionnaires showing that the woman was over 65 years of age and with no affirmative indication of willingness to serve	2,059



Questionnaires showing that the woman was under 21 years of age	151
Questionnaires returned with the notation that the addressee was deceased	53
Questionnaires indicating that the woman declined to serve for no other apparent reason than female exemption	21,884
Questionnaires with affirmative indications that the woman would serve, or without any indication of refusal	3,342

4. The Court may take judicial notice of the Department of Commerce, Bureau of Census, statistics contained in attached Exhibit "E", which exhibit is hereby incorporated by reference, entitled "General Population Characteristics."

5. That the persons summoned for jury duty in the year 1977 including the persons summoned as prospective jurors in this case were selected in the manner described in paragraph one of this stipulation.

Date

WILLIAM WELCH  
Assistant Prosecuting Attorney  
Jackson County Courthouse  
415 East 12th Street  
Kansas City, Missouri 64106  
Counsel for Plaintiff

Date

/s/ Joe F. Willerth  
JOE F. WILLERTH  
317 West Kansas Avenue  
P. O. Box 27  
Independence, Missouri 64051  
833-1500  
Counsel for Defendant

CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
415 EAST 12TH STREET  
KANSAS CITY, MISSOURI 64106

AUSTIN E. VAN BUSKIRK  
COURT ADMINISTRATOR

December 29, 1975

ROBERT J. KRAMER  
DIRECTOR OF COMPUTER SERVICES  
816-881-3668

To: Austin E. Van Buskirk  
Court Administrator

Re: 1976 Jury Wheel

Attached is the summary of questionnaire processing for the 1976 jury wheel. As you can see, the new wheel will contain a total of 27,868 names. If you need further explanation of the attached summary, please let me know.

*Robert J. Kramer*  
Robert J. Kramer  
Director of Computer Services

RJK:bf

cc: John Fitzgerald

D EXHIBIT 51

AUG 18 1978

MAE RYALS

Exhibit  
"A"

SUMMARY OF QUESTIONNAIRE PROCESSING  
FOR THE 1976 JURY WHEEL

Approximate Registered Voters	<u>260,828</u>
Questionnaires Mailed (1/4 voter rolls)	65,207
Deceased and/or Non-Deliverable	2,451
Ineligible/Elected Not To Serve	<u>34,888</u>
Total Records Removed From File	<u>37,339</u>
1976 Jury Wheel	<u>27,868</u>
Changes to File	
Name Changes	167
Address Changes	<u>2,141</u>
Total Changes	<u>2,308</u>
Total Questionnaires Returned	<u>57,457</u>
Number of Questionnaires Not Returned	<u>7,750</u>

MEMORANDUM

June 15, 1976

TO: Thomas M. Larson  
FROM: Charlie Rogers  
RE: Jury Wheel Count

I counted the males and females on the Jackson County Jury Wheel List for 1976, and obtained the following results:

Males	19,755
Females	8,099
Total	<u>27,854</u>

This figures out to slightly less than 29.1% of the persons on the jury wheel list who are female.

I spent a total of 13 hours on this project.

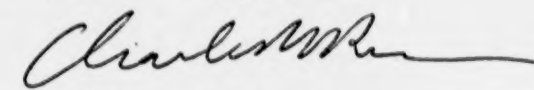
  
Charles M. Rogers  
Certified Law Intern

Exhibit  
"B"

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

**Summons for Jury Service**

To

YOU ARE HEREBY SUMMONED to appear before the Honorable  
PAUL E. VARDEMAN, Judge of DIVISION Q3 of the  
Circuit Court of Jackson County, Missouri IN KANSAS  
CITY AT 12TH & OAK IN RM 301, ON MONDAY THE 15  
day of NOVEMBER, 1976 AT 8:15 o'clock AM to serve as a  
juror until discharged.

IF YOU FAIL TO APPEAR YOU MAY BE HELD IN CONTEMPT OF COURT  
BRING THIS SUMMONS WITH YOU.  
PLEASE READ THE INSTRUCTIONS ON REVERSE SIDE. JOHN R. FITZGERALD  
(OVER) Jury Commissioner

NOVEMBER 15

PLEASE BRING THIS ENTIRE CARD WITH  
YOU WHEN YOU APPEAR AT THE JURY  
ASSEMBLY ROOM.

Exhibit  
"C"



INSTRUCTIONS

Please note the Judge and location on the front side of this card. You must report to him on the day and at the time specified.

No male juror shall be excused from service except for sufficiently valid reasons to be APPROVED BY THE JUDGE or upon PERSONAL APPEARANCE BEFORE SAID JUDGE AS SHOWN ON THE FRONT OF THIS CARD. Applications for excuses must be presented to said Judge on or before 12 o'clock noon on the Thursday preceeding the date which you are to appear as shown on the reverse side.

A physically disabled juror must show that to appear and serve would endanger his health. Such proof must be in the form of a doctor's certificate and be presented to the Judge the same as other applications.

Women, if you do not wish to serve, return this summons to the Judge named on the reverse side as quickly as possible.

Men, if you are over 65 years of age and do not wish to serve, return this summons to the Judge named on the reverse side the same as other applications, before 12 noon Thursday preceeding your date of service. Give your date of birth in your request.

Non-Residents, if you are no longer a resident of Jackson County, Missouri, you are not eligible for jury service. Please let us know you have moved by returning this summons promptly giving your present address.

All persons duly summoned by mail as jurors may be attached for non-appearance and fined by the court for contempt.

We regret that we are unable to furnish parking for jurors.

Please bring this Summons with you when you appear at the Jury Assembly Room.

JURY COMSSR: 6500/ JURY COMSSR: 6500/9/73

26942c 0

TABLE OF JURORS SUMMONED IN JACKSON COUNTY FOR  
SERVICE IN KANSAS CITY - JANUARY, 1976

WEEK	JURORS SUMMONED			EXCUSED OR DECEASED	DEFERRED	ABSENT	APPEARED FOR SERVICE	
1/5/76	Male	247	(75.5%)	70	19	6	152	(92.7%)
	Female	80	(24.5%)	49	2	17	12	(7.3%)
	Total	327		119	21	23	164	
1/12/76	Male	260	(76.5%)	64	25	24	147	(88.6%)
	Female	80	(23.5%)	48	1	12	19	(11.4%)
	Total	340		112	26	36	166	
1/19/76	Male	245	(76.3%)	71	18	14	142	(87.1%)
	Female	76	(23.7%)	45	0	10	21	(12.9%)
	Total	321		116	18	24	163	
1/26/76	Male	234	(72.0%)	85	12	15	122	(81.9%)
	Female	91	(28.0%)	44	2	18	27	(18.1%)
	Total	325		129	14	33	149	
TOTALS								
FOR JANUARY 1976	Male	986	(75.1%)	290	74	59	563	(87.7%)
	Female	327	(24.9%)	186	5	57	79	(12.3%)
	Total	1,313		476	79	116	642	

Exhibit  
"D"

TABLE OF JURORS SUMMONED IN JACKSON COUNTY FOR  
SERVICE IN KANSAS CITY - FEBRUARY, 1976

WEEK OF		JURORS SUMMONED		EXCUSED DECEASED	DEFERRED	ABSENT	APPEARED FOR SERVICE	
2/2/76	Male	224	(70.9%)	64	26	16	118	(79.7%)
	Female	92	(29.1%)	46	4	12	30	(20.3%)
	Total	<u>316</u>		<u>110</u>	<u>30</u>	<u>28</u>	<u>148</u>	
2/9/76	Male	243	(73.6%)	66	18	23	136	(82.9%)
	Female	87	(26.4%)	48	1	10	28	(17.1%)
	Total	<u>330</u>		<u>114</u>	<u>19</u>	<u>33</u>	<u>164</u>	
2/17/76	Male	120	(67.1%)	35	13	4	68	(81.0%)
	Female	59	(32.9%)	37	1	5	16	(19.0%)
	Total	<u>179</u>		<u>72</u>	<u>14</u>	<u>9</u>	<u>84</u>	
2/23/76	Male	235	(69.9%)	59	19	7	150	(84.7%)
	Female	101	(30.1%)	53	2	19	27	(15.3%)
	Total	<u>336</u>		<u>112</u>	<u>21</u>	<u>26</u>	<u>177</u>	
TOTALS FOR FEBRUARY 1976	Male	822	(70.8%)	224	76	50	472	(82.4%)
	Female	339	(29.2%)	184	8	46	101	(17.6%)
	Total	<u>1,161</u>		<u>408</u>	<u>84</u>	<u>96</u>	<u>573</u>	



TABULATION OF DATA OBTAINED FROM LISTS OF JURORS SUMMONED FOR MARCH, 1976.

Week  
Beginning:

		Jurors Summoned	(%)	Excused	Deferred	Not Appearing	Appeared For Service	(%)
March 1, 1976.	Female	90	(72.0%)	56	2	13	19	(13.1%)
	Male	231	(28.0%)	64	21	20	126	(86.9%)
	Total	321		120	23	33	145	
March 8, 1976.	Female	107	(31.9%)	64	2	9	32	(21.8%)
	Male	228	(68.1%)	67	37	9	115	(78.2%)
	Total	335		131	39	18	147	
March 15, 1976.	Female	107	(31.2%)	62	3	17	25	(15.2%)
	Male	228	(68.8%)	58	23	15	140	(84.8%)
	Total	343		120	26	32	165	
March 22, 1976.	Female	50	(26.0%)	27	1	8	14	(15.6%)
	Male	142	(74.0%)	40	17	9	76	(84.8%)
	Total	192		67	18	17	90	
March 29, 1976.	Female	99	(28.6%)	65	3	11	20	(12.5%)
	Male	247	(71.4%)	70	27	10	140	(87.5%)
	Total	346		135	30	21	160	
Total for Weeks of March, 1976.	Female	453	(29.5%)	274	11	58	110	(17.0%)
	Male	1,084	(70.5%)	299	125	63	597	(83.0%)
	TOTAL	1,537		573	136	121	707	

TABLE OF JURORS SUMMONED FOR DUTY IN KANSAS CITY, APRIL, 1976.

week of		Summoned		Excused	Deferred	Not Appearing	Appeared For Service	
4/5/76	Male	248	(71.1%)	65	29	15	139	(79.9%)
	Female	101	(28.9%)	51	1	14	55	(20.1%)
	Total	349		116	30	29	174	
4/12/76	Male	254	(72.2%)	72	21	13	148	(83.1%)
	Female	98	(27.8%)	51	0	17	30	(16.9%)
	Total	352		123	21	30	178	
4/19/76	Male	235	(70.6%)	67	21	12	135	(86.5%)
	Female	98	(29.4%)	54	2	21	21	(13.5%)
	Total	333		121	23	33	156	
4/26/76	Male	121	(74.7%)	29	14	6	72	(90.0%)
	Female	41	(25.3%)	23	0	10	8	(10.0%)
	Total	162		52	14	16	80	
TOTALS FOR APRIL, 1976	Male	858	(71.7%)	233	85	46	494	(84.0%)
	Female	338	(25.3%)	179	3	62	94	(16.0%)
	Total	1196		412	88	108	588	

TABLE OF JURORS SUMMONED FOR DUTY IN KANSAS CITY, MAY, 1976

Week of		Summoned	(%)	Excused	Deferred	Not Appearing	Appeared for Service
5/3/76	Male	240	(72.7%)	60	17	15	148 (87.1%)
	Female	90	(27.3%)	48	2	18	22 (12.9%)
	Total	330		108	19	33	170
5/10/76	Male	236	(72.7%)	52	27	12	145 (89.0%)
	Female	89	(27.3%)	56	0	15	18 (11.0%)
	Total	325		108	27	27	163
5/17/76	Male	231	(72.6%)	56	29	12	134 (86.5%)
	Female	87	(27.4%)	52	2	12	21 (13.5%)
	Total	318		108	31	24	155
5/24/76	Male	239	(74.5%)	53	26	13	147 (85.5%)
	Female	82	(25.5%)	43	1	13	25 (14.5%)
	Total	321		96	27	26	172
Totals for May, 1976	Male	946	(73.3%)	221	99	52	574 (87.0%)
	Female	348	(26.7%)	199	5	58	86 (13.0%)
	Total	1,294		420	104	110	660



TABLE OF JURORS SUMMONED FOR DUTY IN KANSAS CITY, JUNE, 1976

Week of		Summoned	(%)	Excused	Deferred	Not Appearing	Appeared for Service
6/1/76	Male	217	(71.6)	54	29	12	122 (82.4%)
	Female	86	(28.4%)	42	4	14	26 (17.6%)
	Total	303		96	33	26	148
6/7/76	Male	255	(76.8%)	51	35	13	156 (86.2%)
	Female	77	(23.2%)	41	1	10	25 (13.8%)
	Total	332		92	36	23	181
6/14/76	Male	124	(70.1%)	25	18	5	76 (87.4%)
	Female	53	(29.9%)	33	1	8	11 (12.6%)
	Total	177		58	19	13	87
6/21/76	Male	254	(75.8%)	77	33	10	134 (92.4%)
	Female	81	(24.2%)	50	2	18	11 (7.6%)
	Total	335		127	35	28	145
6/28/76	Male	258	(75.4%)	60	40	19	139 (84.2%)
	Female	84	(24.6%)	47	0	11	26 (15.8%)
	Total	342		107	40	30	165
Totals for June, 1976							
	Male	1,108	(74.4%)	267	155	59	627 (86.4%)
	Female	381	(25.6%)	213	8	61	99 (13.6%)
	Total	1,489		480	163	120	726

TABLE OF JURORS SUMMONED FOR DUTY IN KANSAS CITY, JULY, 1976

Week of		Summoned	(%)	Excused	Deferred	Not Appearing	Appeared for Service
7/6/76	Male	241	(76.0%)	74	23	12	132 (89.2%)
	Female	76	(24.0%)	50	1	9	16 (10.2%)
	Total	317		124	24	21	148
7/12/76	Male	244	(73.5%)	79	27	12	126 (86.3%)
	Female	88	(26.5%)	57	1	10	20 (13.7%)
	Total	332		156	28	22	146
7/19/76	Male	216	(74.5%)	53	33	14	116 (87.9%)
	Female	74	(25.5%)	41	4	13	16 (12.1%)
	Total	290		94	37	27	132
7/26/76	Male	136	(70.8%)	39	17	5	75 (78.1%)
	Female	56	(29.2%)	28	2	5	21 (21.9%)
	Total	192		67	19	10	96
Totals for July, 1976.							
	Male	837	(74.0%)	245	100	43	449 (86.0%)
	Female	294	(26.0%)	176	8	37	73 (14.0%)
	Total	1,131		421	108	80	522



# General Population Characteristics

MISSOURI

## 1970 CENSUS OF POPULATION



DEPARTMENT  
OF COMMERCE  
BUREAU OF  
THE CENSUS

Exhibit  
"E"

Table 33. Age by Race and Sex, for Counties: 1970-Continued

For minimum base, see page 1. For symbols, see page 1.

County	1970 population						1970 population					
	All races			White			All races			White		
	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
HOWARD												
Under 5 years	15,591	8,107	7,484	4,817	4,972	479	317	10,774	5,130	5,644	4,497	4,147
5 to 9 years	14,472	7,236	7,236	4,817	4,972	479	317	9,655	4,817	4,838	4,817	4,838
10 to 14 years	13,545	6,772	6,773	4,817	4,972	479	317	8,728	4,364	4,364	4,364	4,364
15 to 19 years	12,618	6,309	6,309	4,817	4,972	479	317	7,801	3,901	3,900	3,901	3,900
20 to 24 years	11,691	5,846	5,845	4,817	4,972	479	317	6,874	3,437	3,437	3,437	3,437
25 to 29 years	10,764	5,383	5,381	4,817	4,972	479	317	5,947	2,973	2,974	2,973	2,974
30 to 34 years	9,837	4,919	4,918	4,817	4,972	479	317	5,020	2,510	2,510	2,510	2,510
35 to 39 years	8,910	4,456	4,454	4,817	4,972	479	317	4,093	2,046	2,047	2,046	2,047
40 to 44 years	7,983	3,992	3,991	4,817	4,972	479	317	3,166	1,583	1,583	1,583	1,583
45 to 49 years	7,056	3,528	3,528	4,817	4,972	479	317	2,239	1,119	1,120	1,119	1,120
50 to 54 years	6,129	3,065	3,064	4,817	4,972	479	317	1,312	656	656	656	656
55 to 59 years	5,202	2,602	2,600	4,817	4,972	479	317	485	242	243	242	243
60 to 64 years	4,275	2,139	2,136	4,817	4,972	479	317	358	179	179	179	179
65 to 69 years	3,348	1,674	1,674	4,817	4,972	479	317	231	115	116	115	116
70 to 74 years	2,421	1,210	1,211	4,817	4,972	479	317	104	52	52	52	52
75 to 79 years	1,494	747	747	4,817	4,972	479	317	27	13	14	13	14
80 to 84 years	567	283	284	4,817	4,972	479	317	7	3	4	3	4
85 to 89 years	180	90	90	4,817	4,972	479	317	2	1	1	1	1
90 to 94 years	53	26	27	4,817	4,972	479	317	0	0	0	0	0
95 to 99 years	16	8	8	4,817	4,972	479	317	0	0	0	0	0
100 years and over	5	2	3	4,817	4,972	479	317	0	0	0	0	0
Under 18 years	48,172	24,086	24,086	4,817	4,972	479	317	24,086	12,043	12,043	12,043	12,043
18 to 64 years	48,172	24,086	24,086	4,817	4,972	479	317	24,086	12,043	12,043	12,043	12,043
65 to 94 years	48,172	24,086	24,086	4,817	4,972	479	317	24,086	12,043	12,043	12,043	12,043
95 to 99 years	48,172	24,086	24,086	4,817	4,972	479	317	24,086	12,043	12,043	12,043	12,043
100 years and over	48,172	24,086	24,086	4,817	4,972	479	317	24,086	12,043	12,043	12,043	12,043
Total	1,210,417	605,208	605,209	48,172	48,172	4,791	3,170	1,162,245	581,122	581,123	581,122	581,123
White	1,162,245	581,122	581,123	48,172	48,172	4,791	3,170	1,114,073	557,031	557,032	557,031	557,032
Nonwhite	48,172	24,086	24,086	0	0	0	0	48,172	24,086	24,086	24,086	24,086
Male	605,208	302,604	302,604	24,086	24,086	2,395	1,585	581,122	290,561	290,561	290,561	290,561
Female	605,209	302,604	302,604	24,086	24,086	2,396	1,585	581,123	290,561	290,562	290,561	290,562
JACKSON												
Under 5 years	10,764	5,383	5,381	4,817	4,972	479	317	5,947	2,973	2,974	2,973	2,974
5 to 9 years	9,837	4,919	4,918	4,817	4,972	479	317	5,020	2,510	2,510	2,510	2,510
10 to 14 years	8,910	4,456	4,454	4,817	4,972	479	317	4,093	2,046	2,047	2,046	2,047
15 to 19 years	7,983	3,992	3,991	4,817	4,972	479	317	3,166	1,583	1,583	1,583	1,583
20 to 24 years	7,056	3,528	3,528	4,817	4,972	479	317	2,239	1,119	1,120	1,119	1,120
25 to 29 years	6,129	3,065	3,064	4,817	4,972	479	317	1,312	656	656	656	656
30 to 34 years	5,202	2,602	2,600	4,817	4,972	479	317	485	242	243	242	243
35 to 39 years	4,275	2,139	2,136	4,817	4,972	479	317	358	179	179	179	179
40 to 44 years	3,348	1,674	1,674	4,817	4,972	479	317	231	115	116	115	116
45 to 49 years	2,421	1,210	1,211	4,817	4,972	479	317	104	52	52	52	52
50 to 54 years	1,494	747	747	4,817	4,972	479	317	27	13	14	13	14
55 to 59 years	567	283	284	4,817	4,972	479	317	7	3	4	3	4
60 to 64 years	180	90	90	4,817	4,972	479	317	2	1	1	1	1
65 to 69 years	53	26	27	4,817	4,972	479	317	0	0	0	0	0
70 to 74 years	16	8	8	4,817	4,972	479	317	0	0	0	0	0
75 to 79 years	5	2	3	4,817	4,972	479	317	0	0	0	0	0
80 to 84 years	1	0	1	4,817	4,972	479	317	0	0	0	0	0
85 to 89 years	0	0	0	4,817	4,972	479	317	0	0	0	0	0
90 to 94 years	0	0	0	4,817	4,972	479	317	0	0	0	0	0
95 to 99 years	0	0	0	4,817	4,972	479	317	0	0	0	0	0
100 years and over	0	0	0	4,817	4,972	479	317	0	0	0	0	0
Under 18 years	30,245	15,122	15,123	4,817	4,972	479	317	15,122	7,561	7,561	7,561	7,561
18 to 64 years	30,245	15,122	15,123	4,817	4,972	479	317	15,122	7,561	7,561	7,561	7,561
65 to 94 years	30,245	15,122	15,123	4,817	4,972	479	317	15,122	7,561	7,561	7,561	7,561
95 to 99 years	30,245	15,122	15,123	4,817	4,972	479	317	15,122	7,561	7,561	7,561	7,561
100 years and over	30,245	15,122	15,123	4,817	4,972	479	317	15,122	7,561	7,561	7,561	7,561
Total	1,210,417	605,208	605,209	48,172	48,172	4,791	3,170	1,162,245	581,122	581,123	581,122	581,123
White	1,162,245	581,122	581,123	48,172	48,172	4,791	3,170	1,114,073	557,031	557,032	557,031	557,032
Nonwhite	48,172	24,086	24,086	0	0	0	0	48,172	24,086	24,086	24,086	24,086
Male	605,208	302,604	302,604	24,086	24,086	2,395	1,585	581,122	290,561	290,561	290,561	290,561
Female	605,209	302,604	302,604	24,086	24,086	2,396	1,585	581,123	290,561	290,562	290,561	290,562



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NO. 78-6077  
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LAVANCE C. JONES,  
Petitioner,

v.

STATE OF MISSOURI,  
Respondent.

\_\_\_\_\_  
ON PETITION FOR WRIT OF CERTIORARI  
TO THE MISSOURI COURT OF APPEALS  
\_\_\_\_\_

\_\_\_\_\_  
BRIEF FOR RESPONDENT IN OPPOSITION  
\_\_\_\_\_

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10

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## CITATIONS

### CASES:

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IN THE  
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LAVANCE C. JONES,

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v.

STATE OF MISSOURI,

Respondent.  
\_\_\_\_\_

ON PETITION FOR WRIT OF CERTIORARI  
TO THE MISSOURI COURT OF APPEALS.  
\_\_\_\_\_

STATEMENT OF THE CASE

Petitioner was tried in April, 1977, in the Circuit Court of Jackson County, Missouri, on charges of murder in the second degree and robbery in the first degree. In the trial of this cause, petitioner filed a timely motion to quash the jury panel based on the allegation that he was denied a fair cross section of the community in his jury panel due to the automatic exemption of women who chose to opt off jury service, contra Taylor v. Louisiana, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975), and the Sixth and Fourteenth Amendments to the United States Constitution. Evidence supporting this allegation was introduced

via a stipulation regarding the statistics of Jackson County's jury wheel for the months January through July, 1976. Petitioner's motion was overruled. Verdicts of guilty were returned and petitioner was sentenced to life imprisonment on the charge of murder in the second degree and 25 years on the robbery charge, said sentences to run consecutively.

Subsequent to trial, petitioner filed a timely motion for new trial raising the above allegation. This motion was overruled. Petitioner's conviction was affirmed by the Missouri Court of Appeals, Kansas City District, on August 28, 1978. The motion for rehearing was overruled on October 10, 1978, and petitioner's application to transfer to the Missouri Supreme Court was denied on November 6, 1978, making the Missouri Court of Appeals' decision the final judgment in this cause. Petitioner raised the above issue on appeal, and this allegation of error was overruled by the Missouri Court of Appeals.

REASONS FOR DENYING THE WRIT

In challenging the composition of the jury panel from which his jury was selected, petitioner relies for evidence on a stipulation which was entered into at trial. Accompanying that stipulation were exhibits designed to demonstrate underrepresentation of women on the 1976 Jackson County jury wheel. That stipulation concluded with the following paragraph:

"5. That the persons summoned for jury duty in the year 1977 including the persons summoned as prospective jurors in this case were selected in the manner described in paragraph one of this stipulation."

The stipulation in the instant case did not serve to eliminate petitioner's obligation to make a prima facie case of underrepresentation of women. By presenting evidence on the composition of Jackson County's 1976 jury wheel but failing to do so as

to the 1977 wheel, from which petitioner's jury was drawn, petitioner has failed to make a prima facie case of underrepresentation under the three-pronged test enunciated by this court in Duren v. Missouri, \_\_\_ U.S. \_\_\_, 99 S.Ct. 664, 58 L.Ed.2d 579 (January 9, 1979):

"In order to establish a prima facie violation of the fair-cross-section requirement, the defendant must show (1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process." 99 S.Ct. at 668.

In the instant case, petitioner's trial was held in 1977, which meant that his jury was selected from a panel drawn from the 1977 Jackson County jury wheel. State v. Nevels, 571 S.W.2d 736, 738 (Mo.Ct.App. at K.C. 1978); Section 497.140, RSMo 1969. Thus, petitioner's reliance on 1976 statistics regarding the Jackson County jury wheel failed to establish that the representation of women in 1977 venires was not fair and reasonable in relation to the number of women in the community.

In Duren v. Missouri, supra, in the face of statistical evidence which demonstrated that more than half of the persons in the community were female and that the Jackson County jury venires for 1976 averaged approximately 15% female, this Court concluded that the petitioner had met the prima facie test, Duren v. Missouri, supra, 99 S.Ct. at 669, and consequently ruled that "such systematic exclusion of women that results in jury venires averaging less than 15% female violates the Constitution's fair-cross-section requirement". Id., 99 S.Ct. at 666. Absent statistical evidence that the 1977 Jackson

County jury wheel resulted "in jury venires averaging less than 15% female" or that the proportion of women available for jury service was "not fair and reasonable in relation to the number of such persons in the community", petitioner has not met the prima facie test set out in Duren. Article I, Section 22B, and §494.031(2), RSMo Supp. 1975, were not ruled facially unconstitutional by this court in Duren v. Missouri, supra. That is to say, although these provisions provide for an automatic exemption by women upon request, a constitutional violation only occurs in those instances where women exercise their privilege not to serve in such numbers as to deny a defendant his right "to a petit jury selected from a fair cross section of the community". Id., 99 S.Ct. at 666. Thus, if an insignificant number of women exercise their right to an automatic exemption, a criminal defendant obviously could not obtain a new trial merely because of the existence of the "automatic exemption" provisions. State v. Harris, 571 S.W.2d 443, 447 (Mo.Ct. App. at St.L. 1978); State v. Mattingly, 573 S.W.2d 372, 375 (Mo.Ct.App. at St.L. 1978). Hence, this petition for a writ of certiorari should be denied because petitioner has failed to present evidence warranting relief. Although the Missouri Court of Appeals in its opinion in this cause held that petitioner's argument was misdirected in light of State v. Duren, 556 S.W.2d 11 (Mo.banc 1977), it did so while implicitly assuming that the argument had been properly preserved for review. 571 S.W.2d at 747. Petitioner's contention was clearly not preserved due to the lack of factual support for his allegation.

Further, respondent submits that the petition for the writ of certiorari should be denied because the specific issue in this cause is now before the Missouri Court of Appeals, Western District, in numerous cases (State v. Arthur Buford, No. 29658; State v. Jerome R. Barnett, No. 29767; State v. Christopher D. Powell, No. 30037; State v. John Coleman, No. 30043; State



v. Leonard A. Donahue, No. 30315; State v. Robert C. Mountjoy, No. 29532; State v. William J. Williamson, No. 30342). Respondent submits that the issue of preservation in cases involving venirees for which no statistics were presented to the trial court is a matter of state procedure and should be decided by a Missouri forum. In several cases involving issues identical to that in this cause, the Missouri Supreme Court has denied out-of-time applications to transfer to the Supreme Court, but has done so "without prejudice to movants' right to move for recall of the mandate and for further relief in the Missouri Court of Appeals, Western District". State v. Frank J. Clark, No. 61148, March 15, 1979; State v. Leon Nevels, No. 61043, March 15, 1979. Thus, the petitioner in this cause can move for recall of the mandate in the Missouri Court of Appeals and the issue of preservation may be decided in light of this Court's decision in Duren. It should be noted that at the time the opinion was rendered in this cause by the Missouri Court of Appeals, Duren v. Missouri, supra, had not yet been decided by this Court, and thus the Court of Appeals was bound by the Missouri Supreme Court's decision in State v. Duren, supra. Because of the apparently controlling effect of State v. Duren, the Missouri Court of Appeals did not reach the preservation issue in this case or others like it. Respondent submits that the Missouri Court of Appeals should now do so.


#### CONCLUSION

WHEREFORE, respondent respectfully requests this Court to

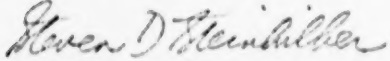
deny the petition for writ of certiorari to the Missouri Court of Appeals.

Respectfully submitted,

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